No. 12298

# In The United States Court of Appeals
## For the Ninth Circuit

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ALASKA STEAMSHIP COMPANY, a corporation,
*Appellant*

vs.

M. P. MULLANEY, Commissioner of Taxation, Territory of Alaska,
*Appellee.*

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UPON APPEAL FROM THE DISTRICT COURT FOR THE TERRITORY OF ALASKA, DIVISION NUMBER ONE

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## BRIEF OF AMICI CURIAE

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SAM L. LEVINSON,
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## BRIEF OF AMICI CURIAE

### INTEREST OF AMICI CURIAE

*Amici curiae* filing this brief are attorneys representing the Marine Firemen, Oilers, Watertenders and Wipers, a voluntary association, the Marine Engineers' Beneficial Association, a voluntary association, and the National Union of Marine Cooks and Stewards, a voluntary association. These organizations have intervened in actions pending in the United States District Court for the Western District of Washingon, Northern Division, instituted for the purpose of enjoining the withholding from seamen's wages of the income tax imposed by the Alaska Net Income Tax Law, Laws of 1949, Chapter 115, Territory of Alaska. Preliminary injunctions have been issued by the district court. The final disposition of these cases awaits the outcome of this appeal.

It is to be noted, however, that the interests of these three associations are not confined to the Alaska trade as many of the members are engaged in other trades.

## SUMMARY OF ARGUMENT

The imposition by the Territory of Alaska of a withholding provision upon the wages of seamen is invalid, because the necessary consequence of such a provision is the destruction of the uniformity in maritime matters which the Constitution and the acts of Congress are designed to obtain.

## ARGUMENT

### Admiralty Is a Unique Jurisprudence

Admiralty is a separate and complete jurisprudence, with rules of decision and procedure all its own. It existed in Colonial times and long before and embodies the principles of the general maritime law or the law of the sea. Our Federal Constitution was framed with that in mind and the entire subject—substantive as well as procedural features — was placed under national control because of its intimate relation to navigation and to interstate and foreign commerce. Although the Constitutional provision contains no express grant of legislative power over substantive law, that provision was regarded from the beginning as implicitly investing such power in the United States. Commentators took that view, Congress acted on it, and the courts gave effect to it. Practically, therefore, the situation is as though that view were written into the provision. After the Constitution went into effect, the substantive law theretofore in force was not regarded as superseded or as being only the law of the several states, but as having become the law of the United States—subject to power in Con-

gress to alter, qualify or supplement it as experience or changing conditions might require.[1]

The growth of admiralty and maritime jurisprudence is one of the fascinating aspects of American Constitutional development. It proves that the maritime law of our nation is "flexible enough to keep in step with advancing civilization and do its part in fulfilling the splendid destiny of this republic by the sea."[2]

**Parallel of Workmen's Compensation Cases**

For this case, the development of the adoption of the principles of the workmen's compensation laws into the Federal system of maritime jurisprudence strikes an interesting and illuminating parallel. On August 15, 1914, Christen Jensen, an employee of the Southern Pacific Company, a Kentucky corporation, was killed while operating a small electric freight truck at Pier 49, North River, New York City. His widow made a claim under the New York Workmen's Compensation Act, which was allowed and approved by the Court of Appeals of New York.[3] The United States Supreme Court held, when the case came before it, that the work in which Jensen was engaged was maritime in its nature, his employment was a maritime contract, the injuries which he sustained were likewise maritime, and the rights and liabilities of the parties were matters clearly within the admiralty jurisdiction. The court stated that, whereas

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[1] *Panama R.R. Co. v. Johnson* (1924) 264 U.S. 375, 386, 68 L. ed. 748, 44 S. Ct. 391.

[2] The *Nanking* (D.C., Cal. 1923) 292 Fed. 642.

[3] 215 N.Y. 514.

exclusive jurisdiction of all civil cases of admiralty and maritime jurisdiction is vested in the Federal district courts, "saving to suitors in all cases, the right of a common law remedy, where the common law is competent to give it," the remedy which the workmen's compensation statute attempted to give was of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court, and was not saved to suitors from the grant of exclusive jurisdiction. The court said:

> "If New York can subject foreign ships coming into her ports to such obligations as those imposed by her Compensation Statute, other States may do likewise. The necessary consequence would be destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded.
>
> "No such legislation is valid if it contravenes the essential purpose expressed by an act of Congress or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations."[4]

This decision caused Congress to pass the Act of October 6, 1917, which added the words "and to claimants the rights and remedies under the work-

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[4]*Southern Pacific Co. v. Jensen* (1916) 244 U.S. 205, 61 L. ed. 1086, 37 S. Ct. 524, L.R.A. 1918-C, 451.

men's compensation law of any state," to clause 3 of Sections 24 and 256 of the Judicial Code.[5]

On August 3, 1918, William M. Stewart, while employed by Knickerbocker Ice Company as a bargeman and doing work of a maritime nature, fell into the Hudson River and drowned. His widow claimed under the Workmen's Compensation Law of New York. She was granted an award and the New York courts approved.[6] But the United States Supreme Court held that the amendment of October 6, 1917, was beyond the power of Congress, whose power to legislate concerning rights and liabilities within the maritime jurisdiction and remedies for their enforcement arises from the Constitution. The court said:

> "The definite object of the grant was to commit direct control to the Federal Government; to relieve maritime commerce from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practicable, harmonious and uniform rules applicable throughout every part of the Union.
>
> "Congress cannot transfer its legislative power to the States — by nature this is nondelegable."[7]

In the light of the *Stewart* and other cases, Congress again amended clause 3 of Sections 24 and 256 of the Judicial Code to permit application of the

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[5]Act of Oct. 6, 1917, Chap. 97, 40 Stat. at Large 395, 28 U.S.C.A. §§41(3), 371.

[6]226 N.Y. 302.

[7]*Knickerbocker Ice Co. v. Stewart* (1920) 253 U.S. 149, 164, 64 L. ed. 834, 40 S. Ct. 438.

workmen's compensation laws of the several states to injuries within the admiralty and maritime jurisdiction, excepting the masters and crews of vessels, and withheld from the district courts jurisdiction over compensation matters.[8]

This amendment came before the United States Supreme Court in *State of Washington v. W. C. Dawson & Co.*,[9] on the question whether one engaged in stevedoring whose employees worked only on the navigable waters of Puget Sound, could be compelled to contribute to the accident fund provided for by the Washington State workmen's compensation act. The State of Washington contended that the objections pointed out in the *Knickerbocker* case were removed by the Act of June 10, 1922. The court said:

> "Without doubt Congress has power to alter, amend or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law or general provisions for compensating injured employees; but it may not be delegated to the several states. The grant of admiralty and maritime jurisdiction looks to uniformity; otherwise wide discretion is left to Congress.
>
> "This cause presents a situation where there is no attempt to prescribe general rules. On the contrary, the manifest purpose was to permit any State to alter the maritime law and thereby introduce conflicting requirements. To prevent this result the Constitution adopted the law of

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[8]Act of June 10, 1922, Chap. 216, 42 Stat. at Large 634, 28 U.S.C.A., §§41(3), 371.

[9]264 U.S. 219, 68 L.ed. 646, 44 S.Ct. 302.

> the sea as a measure of maritime rights and obligations. The confusion and difficulty, if vessels were compelled to comply with the local statutes at every port, are not difficult to see. Of course, some within the states may prefer local rules; but the Union was formed with the very definite design of freeing maritime commerce from intolerable restrictions incident to such control. The subject is national. Local interest must yield to the common welfare. The Constitution is supreme."

This decision pointed the way for the Longshoremen's & Harbor Workers' Act [10] But for the purposes of this discussion these decisions illustrate the care with which the Courts protect the admiralty and the maritime jurisdiction of the United States from encroachment by the states, however desirable the ultimate object may be. And these cases and resulting statutes illustrate the fact that the maritime law is capable of growth and expansion without doing violence to its age-old principles, and is able to keep in step with advancing civilization and social progress.[11]

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[10]Act of March 4, 1927, Chap. 509, 33 U.S.C.A. §§ 901-950.
Note that this Act, preserving the principles of maritime law, does not cover the master and the members of the crew or persons employed by the master to load, unload or repair a vessel under 18 tons net.

[11]It is true that these workmen's compensation cases have been criticized. See Mr. Justice Black's reference to them in *Just v. Chambers* (1941), 312 U.S. 383; *Parker v. Motor Boat Sales* (1941), 314 U.S. 244; and *Davis v. Dept. of Labor & Industries* (1942), 317 U.S. 249. But the cases have never been overruled and still stand as landmarks in the history of maritime jurisprudence.

**Effect on Maritime Law of Social Security Act**

As might be supposed, the advent of social security benefits affected maritime law. An employer of a cook on an hydraulic suction dredge appealed from the imposition upon him of the New York state unemployment compensation tax. The United States Supreme Court, speaking through Mr. Justice Black who admitted that arguably the employees involved, because of the nature of their work, were not within the scope of that portion of admiralty jurisdiction which has been said to be necessarily exclusive, in *Standard Dredging Co. v. Murphy*,[12] reversing the New York court, held the employer liable for contributions.

This case, if ever in point, is no longer of importance, because Congress in August of 1946 amended the Social Security Act[13] and provided that the state in which is maintained the operating office from which maritime vessels are ordinarily and regularly supervised, managed, directed, and controlled, may require the officers and members of the crew of such vessels to contribute to its unemployment fund, and that the officers and members of the crew shall not be required to contribute, with respect to such service, to the unemployment compensation fund of any other state. This statute, preserving the identity and the integrity of the maritime law, has reached out over the "wards of the admiralty"—the officers and

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[12](1943), 319 U.S. 306.

[13]Act of August 10, 1946, Chap. 951, Title III, §301 (a), 60 Stat. at Large 981, which appears as subsection (f) of 26 U.S.C.A. §1606. See Appendix.

members of the crews of American vessels— and has given them the protection afforded other citizens under the unemployment compensation laws. This was done without violence to the age-old law of the sea, and without interference with the conduct of interstate and foreign commerce.

**Alaska's Withholding Tax on Seamen's Wages**

The specific problem in this case is to determine, in the light of the development of American maritime jurisprudence, whether the Territory of Alaska may impose a withholding provision as a feature of its Territorial Income Tax Act[14] upon officers and members of a crew of vessels engaged in maritime commerce. The problem involves a determination of the effect of this Territorial Act upon the uniformity of maritime matters and the freedom of navigation between the states and with foreign countries which the Constitution was designed to establish. No statute of a state or territory can be valid if it prejudices the symmetry of the general maritime law, as established by the Constitution and by Congress, or interferes with the uniformity of that law in its interstate and international aspects.

When the State of Oregon attempted to collect income taxes due from seamen by requiring their employers to withhold a portion of their wages, Judge McColloch concluded that such a provision was contrary to the Federal statutes which are designed to

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[14]Chap. 115, Laws of 1949, Territory of Alaska.

members of a crew of vessels engaged in maritime

[15]*American-Hawaiian S. S. Co. v. Fisher* (1948), 82 F. Supp. 193.

obtain uniformity.[15] He concluded that 46 U.S.C.A. §§591-605, 682-685 are laws of the United States enacted pursuant to Article III, Section 2, clause 1, and Article I, Section 8, clause 3 of the Constitution of the United States and prescribe the manner in which the wages of seamen shall be paid by employers and specify that no deductions shall be made from the wages of seamen except as authorized by Federal law. These provisions, he said, are laws of the United States enacted under and pursuant to the Constitution to provide a uniform system of law with respect to the wages of seamen, and the Oregon statute is contrary to and in conflict with the Federal law and is invalid as applied to seamen under the Constitution and laws of the United States.

This view is entirely consistent with the concept of maritime jurisprudence as it has grown and developed in America, and is in entire accord with the conclusions of the courts in *Wilder v. Inter-Island Nav. Co.*[16] and *Shilman v. United States.*[17] Mr. Justice Day in the *Wilder* case. discussing the payment of a seaman's wages, said:

> "But we are of the opinion that this statute is not to be too narrowly construed, but rather to be liberally interpreted with a view to affecting the protection intended to a class of persons whose improvidence and prodigality have led to legislative provisions in their favor, and which has made them, as Mr. Justice Story declared, 'the wards of the admiralty'."

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[16]211 U.S. 239, 246, 53 L.ed. 164, 29 S.Ct. 58.

[17](C.C.A. 2, 1947), 164 F.(2d) 649, 650, cert. den. 333 U.S. 837.

Judge Augustus N. Hand expressed the same thought in these words in the *Shilman* case:

> "The above sections [46 U.S.C.A. §§596, 597, 600, 601, 682, 683, and 685] look to the payment to the seaman by his employer, at the termination of the employment, of all his earned wages, without any deductions except those which are expressly authorized by statute."

In 4 Benedict on Admiralty (6th Ed.) §621, is found this statement:

> "The character of seamen and the nature of their employment have induced Congress to provide specially for the collection of their demands. Seamen have always been considered as wards of the admiralty. The wages of their perilous service have been by all nations highly favored in the law. It was the great consideration of policy and justice connected with that humble but most useful class of men that induced the English common law courts to leave to admiralty the undisputed cognizance of suits for seamen's wages and to make those wages a lien upon the last plank of the ship."

Congress may enact statutes of general application, as it has done in regard to seamen's wages, within its power under the Constitution and without distortion of the great design of the maritime law. The courts will give effect to those rules, and, as was said in *Hume v. Moore-McCormack Lines*,[18] in speaking of the "distinctive doctrine" applicable to admiralty:

> "The legislative policy has been to extend that unique protection; in order to effectuate the Congressional intention, statutes of that type have

[18](C.C.A. 2, 1941), 121 F.(2d) 336, 347.

> been liberally construed to favor the seaman (*Bainbridge v. Merchants' & Miners' Transp. Co.*, 287 U.S. 278, 53 S.Ct. 159, 77 L.ed. 302), who has been called the 'ward of the legislature.' That the legislative policy, in turn, should perhaps affect the judicial attitude, even as to matters not completely within the boundaries of a statute, was suggested by Mr. Justice Holmes, on Circuit, in *Johnson v. United States*, 1 Cir., 163 F. 30, 32, 18 L.R.A., N.S., 1194."

If Alaska is allowed to impose its withholding provision on incomes of seamen making voyages there, and the Territory of Hawaii has no such tax law, or a different tax law, the uniformity contemplated by the Constitution is obviously impaired. Or if Alaska is permitted, under some theory, to force the withholding of a part of the wages of seamen, then the Territory of Hawaii and the states can do likewise. Conceivably, in such event, a seaman on a ship leaving Boston and traveling down the Atlantic Coast, through the Gulf, up the Pacific Coast, and on to Alaska, would have taxes withheld from his wages by six or eight states and one territory. If that happened, we suppose that there would be allowed the unfortunate seaman some method of making claim for excess withholding taxes deducted from his wages. But, aside from the problem of the validity of such taxes on nonresidents, the burden placed upon seamen would be excessive, for they still compose that "humble but most useful class of men."

More important, however, than any burden imposed on individual seamen, this type of territorial legislation casts upon maritime commerce the very

kind of burdens and disadvantages which the Constitution sought to avoid by granting direct control to the Federal government. And it obviously interferes with that uniformity which our maritime jurisprudence has consistently strived to maintain. Without discussing other factors, adequately covered in other briefs, which affect the validity of the Alaska Income Tax Act as applied to seamen, it is clearly apparent that this act is not consistent with, and is directly opposed to, the grand scheme of uniformity of our Constitutional system of maritime and admiralty jurisprudence.

## CONCLUSION

Section 8 of the Alaska Net Income Tax Law as applied to wages of seamen is contrary to, and in conflict with, the Federal law and is invalid as applied to seamen under the Constitution and laws of the United States. The enforcement of the act should, therefore, be enjoined.

Respectfully submitted,

SAM L. LEVINSON,
EDWIN J. FRIEDMAN,
LEVINSON & FRIEDMAN,
*Amici Curiae.*

## APPENDIX

**United States Constitution, Article I, Section 8:**

"The Congress shall have power,—

"To regulate commerce with foreign nations and among the several states and with the Indian tribes."

**United States Constitution, Article III, Section 2:**

"The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—* * *"

**Act of August 10, 1946, 26 U.S.C.A. §1606 (f):**

"The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Federal Security Administrator (or approved by the Social Security Board prior to July 16, 1946) under section 1603 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the

officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (2) thereof) of subsection (b) of this section with respect to contributions required from instrumentalities of the United States and from individuals in their employ. 53 Stat. 187, amended Aug. 10, 1939, c. 666, Title VI, §613, 53 Stat. 1391; Oct. 23, 1945, c. 433, §7(c), 59 Stat. 549; 1946 Reorg. Plan No. 2, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, c. 951, Title III, §301(a), 60 Stat. 981.

**46 U.S.C.A. §596. "Time for payment; double wages recoverable.**

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens;

and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts. R.S. §4529; Dec. 21, 1898, c. 28, §§4, 26, 30 Stat. 756, 764; Mar. 4, 1915, c. 153, §3, 38 Stat. 1164."

**46 U.S.C.A. §597. "Payment at ports.**

"Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the

wages which shall be then due him, as provided in the preceding section: *Provided further*, That notwithstanding any release signed by any seaman under section 644 of this title any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement. This section shall not apply to fishing or whaling vessels or yachts. R.S. §4530; Dec. 21, 1898, c. 28, §§5, 26, 30 Stat. 756, 764; Mar. 4, 1915, c. 153, §4, 38 Stat. 1165; June 5, 1920, c. 250, §31, 41 Stat. 1006."

**46 U.S.C.A. §600. "Agreement as to loss of lien or right to wages.**

"No seaman shall, by any agreement other than is provided by sections 541-543, 545-549, 561, 562, 564-571, 574-578, 591-597, 600, 602-605, 621-628, 641-643, 644, 645, 651-660, 661-669, 674-679, 682-685, 701-710, and 711-713 of this title, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of such sections, and every stipulation by which any seaman consents to abandon his right to his wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative. R.S. §4535."

**46 U.S.C.A. §601. "Attachment or arrestment of wages; support of seaman's wife.**

"No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. This section shall apply to fishermen employed on fishing vessels as well as to seamen: *Provided*, That nothing contained in this or sections 80, 569, 596, 597, 599, 656, 673, 701, 703, 712, and 713 of this title shall interfere with the order by any court regarding the payment by any seaman of any part of his wages for the support and maintenance of his wife and minor children. Mar. 4, 1915, c. 153, §12, 38 Stat. 1169."

**46 U.S.C.A. §682. "Wages on discharge.**

"Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any Act of Congress or according to the general principles or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman; but no payment of extra wages shall be required by any consular officer upon

such discharge of any seaman except as provided in sections 658, 683, 684, and 685 of this title. R.S. §4580; June 26, 1884, c. 121, §2, 23 Stat. 54."

**46 U.S.C.A. §683. "Penalty for neglect of consular officer to collect wages; incapacitated seaman.**

"If any consular officer, when discharging any seaman, shall neglect to require the payment of and collect the arrears of wages and extra wages required to be paid in the case of the discharge of any seaman, he shall be accountable to the United States for the full amount thereof. The master shall provide any seaman so discharged with employment on a vessel agreed to by the seaman, or shall provide him with one month's extra wages, if it shall be shown to the satisfaction of the consul that such seaman was not discharged for neglect of duty, incompetency, or injury incurred on the vessel. If the seaman is discharged by voluntary consent before the consul he shall be entitled to his wages up to the time of his discharge, but not for any further period. If the seaman is discharged on account of injury or illness, incapacitating him for service, the expenses of his maintenance and return to the United States shall be paid from the fund for the maintenance and transportation of destitute American seamen.

"Provided, That at the discretion of the Secretary of Commerce, and under such regulations as he may prescribe, if any seaman incapacitated from service by injury or illness is on board a vessel so situated that a prompt discharge requiring the personal appearance of the master of the vessel before an American consul or consular agent is impracticable, such seaman may be sent

to a consul or consular agent, who shall care for him and defray the cost of his maintenance and transportation, as provided in this paragraph. R.S. §4581; June 26, 1884, c. 121, §7, 23 Stat. 55; Apr. 4, 1888, c. 61, §3, 25 Stat. 80; Dec. 21, 1898, c. 28, §16, 30 Stat. 759; Mar. 4, 1915, c. 153, §19, 38 Stat. 1185."

**46 U.S.C.A. §685. "Wages on justifiable complaint of seaman.**

"Whenever on the discharge of a seaman in a foreign country by a consular officer on his complaint that the voyage is continued contrary to agreement, or that the vessel is badly provisioned or unseaworthy, or against the officers for cruel treatment, it shall be the duty of the consul or consular agent to institute a proper inquiry into the matter, and upon his being satisfied of the truth and justice of such complaint, he shall require the master to pay to such seaman one month's wages over and above the wages due at the time of discharge, and to provide him with adequate employment on board some other vessel, or provide him with a passage on board some other vessel bound to the port from which he was originally shipped, or to the most convenient port of entry in the United States, or to a port agreed to by the seaman. R.S. §4588; June 26, 1884, c. 121, §3, 23 Stat. 54; Dec. 21, 1898, c. 28, §18, 30 Stat. 760."